

A-6061

Special Permit

Install a wrought iron fence with three (3) gates measuring a maximum of fifty (50) inches in height in the Kirkside Drive public right-of-way.

Laura M. Billings &
David A. O'Neil
5803 Kirkside Drive

5803 Kirkside Drive



Figure 1: View of 5803 Kirkside Drive.

**CHEVY CHASE VILLAGE
NOTICE OF PUBLIC HEARING**

Please take notice that the Chevy Chase Village Board of Managers will hold a public hearing on the 9th day of January, 2012 at 7:30 p.m. The hearing will be held at the Chevy Chase Village Hall at 5906 Connecticut Avenue in Chevy Chase, Maryland.

**APPEAL NUMBER A-6061
LAURA M. BILLINGS &
DAVID A. O'NEIL
5803 KIRKSIDE DRIVE
CHEVY CHASE, MARYLAND 20815**

The applicants seek a special permit from the Board of Managers pursuant to Section 8-11 of the Chevy Chase Village Building Code to install a wrought iron fence with three (3) gates measuring a maximum of fifty (50) inches in height in the Kirkside Drive public right-of-way.

The Chevy Chase Village Code § 8-31 (c) states:

Except as provided in Section 31-(b), no structures, play equipment, fence, wall, tree, hedge or shrubbery, or any growth, shall be permitted on public property devoted to private use without a special permit from the Board of Managers.

Additional information regarding this appeal may be obtained at the Chevy Chase Village Office between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, may be viewed on the Village website at www.chevychasevillagemd.gov or you may contact the office for this information to be mailed to you.

This notice was mailed to abutting property owners on the 30th day of December, 2011.

**Chevy Chase Village Office
5906 Connecticut Avenue
Chevy Chase, Maryland 20815
301-654-7300**

Chevy Chase Village

Application for a Special Permit

Chevy Chase Village Code Section 8-1(aa) defines a Special Permit as permission granted by the Board of Managers in accordance with Article II Division B of this Chapter [8], to construct, install, remove or alter a structure or planting, or take other action where such permission is required by this Chapter.

| |
|---|
| Subject Property: 5803 Kirkside Drive |
| Describe the Proposed Project: Permission for installed iron fence to be 43" instead of 42" inches in certain places, and permission for driveway gates to rise to 50" |
| Applicant Name(s) (List all property owners): David O'Neil, Laura Billings |
| Daytime telephone: 202-514-3712 / 202-626-5807 Cell: 202-305-5038 / 917-359-0949 |
| E-mail: daveoneil0505@yahoo.com; laura_m_billings@yahoo.com |
| Address (if different from property address): |
| For Village staff use: Date this form received: 12/19/11 Special Permit No: A-6060 |

Filing Requirements:

Application will not be accepted or reviewed until the application is complete

- ☒ Completed *Chevy Chase Village Application for a Special Permit* (this form)
- ☒ Completed *Chevy Chase Village Building Permit Application*
- ☒ A boundary survey or plat diagram with a margin of error of one tenth of a foot or less showing all existing structures, projections and impervious surfaces. *None previously provided*
- ☒ Surveys, plats, engineering reports, construction plans/specifications or other accurate drawings showing boundaries, dimensions, and area of the property, as well as the location and dimensions of all structures/fences/walls/etc., existing and proposed to be erected, and the distances of such structures/fences/walls/etc., from the nearest property lines. These drawings shall incorporate and display reference dimensions from the boundary survey or plat diagram required above.
- ☒ Copy of Covenants, except for special permits authorized by Sections 8-22, 8-26 or Article IV of Chapter 8 of the Chevy Chase Village Code. *Previously provided*
- ☒ Applicable special permit fee listed in Chapter 6 of the Village Code.

Affidavit

I hereby certify that I have the authority to submit the foregoing application, that all owners of the property have signed below, that I have read and understand all requirements and that I or an authorized representative will appear at the scheduled public hearing in this matter. I hereby authorize the Village Manager, or the Manager's designee, and/or the Board of Managers to enter onto the subject property for the purposes of assessing the site in relation to this special permit request. I hereby declare and affirm, under penalty of perjury, that all matters and facts set forth in the foregoing application are true and correct to the best of my knowledge, information and belief.

Applicant's Signature: 

Date: 12/15/11

Applicant's Signature: 

Date: 12/15/11

Describe the basis for the special permit request (attach additional pages as needed):

Describe the reasons why approval of the special permit would not adversely affect the public health, safety or welfare or the reasonable use of adjoining properties:

See attached

Describe the reasons why the special permit can be granted without substantial impairment of the intent and purpose of Chapter 8 of the Chevy Chase Village Code, entitled *Buildings and Building Regulations*:

See attached

In exercising its powers in connection with a special permit request, the Chevy Chase Village Board of Managers may reverse or affirm, wholly or partly, or may modify the requirement, decision or determination as it deems appropriate.

| | |
|---|--|
| Special Permit Filing Fees | Checks Payable To: |
| <i>Per Village Code Sec. 6-2(a)(24):</i> | Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815 |
| <input type="checkbox"/> \$300.00 for new construction. <input checked="" type="checkbox"/> \$150.00 for replacing existing non-conformities. <input type="checkbox"/> \$2,250.00 for demolition of main building. <input type="checkbox"/> \$300.00 for demolition of accessory building or structure. <input type="checkbox"/> \$300.00 for fences, walls, play equipment, trees, hedges, shrubbery in the public right-of-way. | Date Paid: 12/19/11 Staff Signature: <i>W. H. H. H.</i> |
| Fee Paid: 150.00 <i>Chuk</i> | |

5803 Kirkside Drive

Building Permit and Special Permit Application – Narrative statement

Introduction

We submit the attached applications to request the Board's permission to maintain our existing iron fence panels and posts, walkway gate, and refabricated driveway gates. The Board previously approved the installation of the fence and gates based on an application and a hearing at the regular Board meeting on May 16, 2011. (Case Number 5917).

Background

After the fence and gates that were the subject of Case Number 5917 were installed at our residence in November, the Village's Code Enforcement Coordinator came to our house and measured several aspects of the fence. She advised us that the Board had approved installation of a fence measuring 42 inches tall and that our fence was nonconforming because:

- some of the support posts for the iron panels of the fence are taller than the permitted 42 inches (by our measurement, they range from 41 – 43 inches tall and are spaced 6 feet apart across the span of the fence);
- the supports for the driveway gates are taller than 42 inches -- they are 48 inches; and
- the arch in the center of the driveway gates is taller than 48 inches. (See Attachment 1).

We thereafter received a letter from the Village dated November 30, 2011, stating in part, "the gates and some parts of the fence that have been installed in the Kirkside Drive right-of-way are in violation of the application" and instructing us to remove the defects within 30 days.

We promptly removed the driveway gates. We then asked the Village how we should proceed with respect to the posts, which are all cemented into the ground. On December 5, 2011, the Code Enforcement Coordinator emailed us to inform us that we could leave the posts until a hearing before the Board.

We requested guidance on which documents we needed to file with the Board, and on the Village's instruction, we are filing this special permit application and a new building application, along with an additional fee.

Summary of Requests

We request the Board's permission to:

- 1) Maintain the iron fence panels as is. We are unaware of any nonconforming aspects of the fence panels. However, the aforementioned letter from the Village states that "some parts of the fence" are in violation of our application, and an email from the Code Enforcement Coordinator dated December 5, 2011, states that "it appears that the fence pickets are 42 inches, depending on the grade." This suggests to us that, at certain points along the fence where the grade varies, the Code Enforcement Coordinator measured the fence panels to be higher than 42 inches. If there are any such nonconformities, we would argue that they are measurably and visually insignificant. They are also unavoidable given the minor, natural variations in the grade of the ground underneath the fence. We are including a picture that demonstrates the fence is essentially straight across. (See Attachment 2).

- 2) Maintain the support posts for the iron panels at their current height of 41 to 43 inches;
- 3) Maintain the support posts for the driveway gates at their current height of 48 inches;
- 4) Maintain our walkway gate, which arcs above 42 inches to 48 inches at its peak. (See Attachment 3). This gate has not been a subject of emails or letter correspondence from the Village. We include it here, however, to ensure approval and no future code enforcement actions.
- 5) Re-install our driveway gates in refabricated form, as described below.

Support for Permit Requests

All aspects of our fence panels, posts, and walkway gate that exceed 42 inches were inadvertent. As you can see from our contract with Long Fence, we purchased a 42 inch fence. (See Attachment 4). We did not realize that the support posts would, in some cases, slightly exceed the height of the panels. Regardless, the fence panels, posts, and walkway gate fully comply with all Village regulations because they do not exceed 48 inches in height. (See Section 8-31(b)). Indeed, under revisions to Section 8-31(b) enacted earlier this year, the Village Manager could approve the fence panels, posts, and walkway gate without involvement of the Board. We note that the support posts are now cemented into the ground, and replacing them would be extraordinarily expensive and burdensome.

With respect to the driveway gates, we have spoken at length with Long Fence about our options for refabricating the gates. Long Fence can maintain the integrity of the gates and shorten them such that the peak of the arch would reach 50 inches. The portion of the arch that would exceed 48 inches would be only about one foot wide, and the remainder of the gates and supports would be 48 inches or less. The driveway gates will almost always be open, with the exception of when our children are playing in the yard on the weekends, such that the small arched sections of the gates that would rise to 50 inches would very rarely even be visible from the street.

We would like to explain why, with respect to the driveway gates and the walkway gate, we did not specify the arch formations and their respective heights on our initial permit request. At some point very early on in the process (we were in communications with the Village for over a year before submitting our final application) -- we cannot recall how or when -- we formed the impression that arches or other aesthetic flair on gates was permissible, as long as the actual fence itself was of the specified height.

For this reason, we asked Long Fence to install a 42 inch fence with arching gates without inquiring of Long Fence the precise measurements of the arched portions of the gates. Likewise, we did not describe the arches in writing in our fence permit application, despite the pictorial representation of the gates that we submitted in our original application. These pictures -- which were created by us, and not by a landscape designer -- are from a software program that Dave used to design and pictorially represent the parts of our landscaping project for which a permit was required, and they were submitted to the Board as part of our original permit request. In these pictures, we attempted, to the extent of the program's capabilities, to mimic this arched design. (See Attachments 5 and 6).

The omission of the gate arches in our initial permit application was inadvertent. We are first-time homeowners, relatively new to the Village, and have been somewhat overwhelmed and confounded by the permitting process. In fact, we understand that, at a meeting this summer, the Board expressed frustration at the confusion, expense, and administrative burden that the application for this very landscaping project has caused the Village and, in response, amended Section 8-31(b) to streamline the process. We concur that the process has been confusing, expensive, and administratively burdensome, but we have tried very hard to follow the instructions of the Village, and our omission of the gate details in our initial application was not an effort to mislead.

We believe that the fence improves our property, the street, and the neighborhood. We did not want to impose on our neighbors once more by asking them to weigh in on this request, but we are confident none would object to 43-inch instead of 42-inch support posts or to a gate that rises to 50 inches for approximately one foot across the center. To our knowledge, no resident of the Village has voiced any concern about the height of the fence or the gates; the issue was raised by Village staff. We apologize that the Board is required once again to address a permit request for this fence, and we respectfully request that you grant our permit applications.

NOTES

| | | |
|---|-------|----------------------------------|
| 5 | 10-20 | remove per air condition 10-20-0 |
| 4 | 10-20 | remove per air condition 10-20-0 |
| 3 | 10-20 | remove per air condition 10-20-0 |
| 2 | 10-20 | remove per air condition 10-20-0 |
| 1 | 10-20 | remove per air condition 10-20-0 |

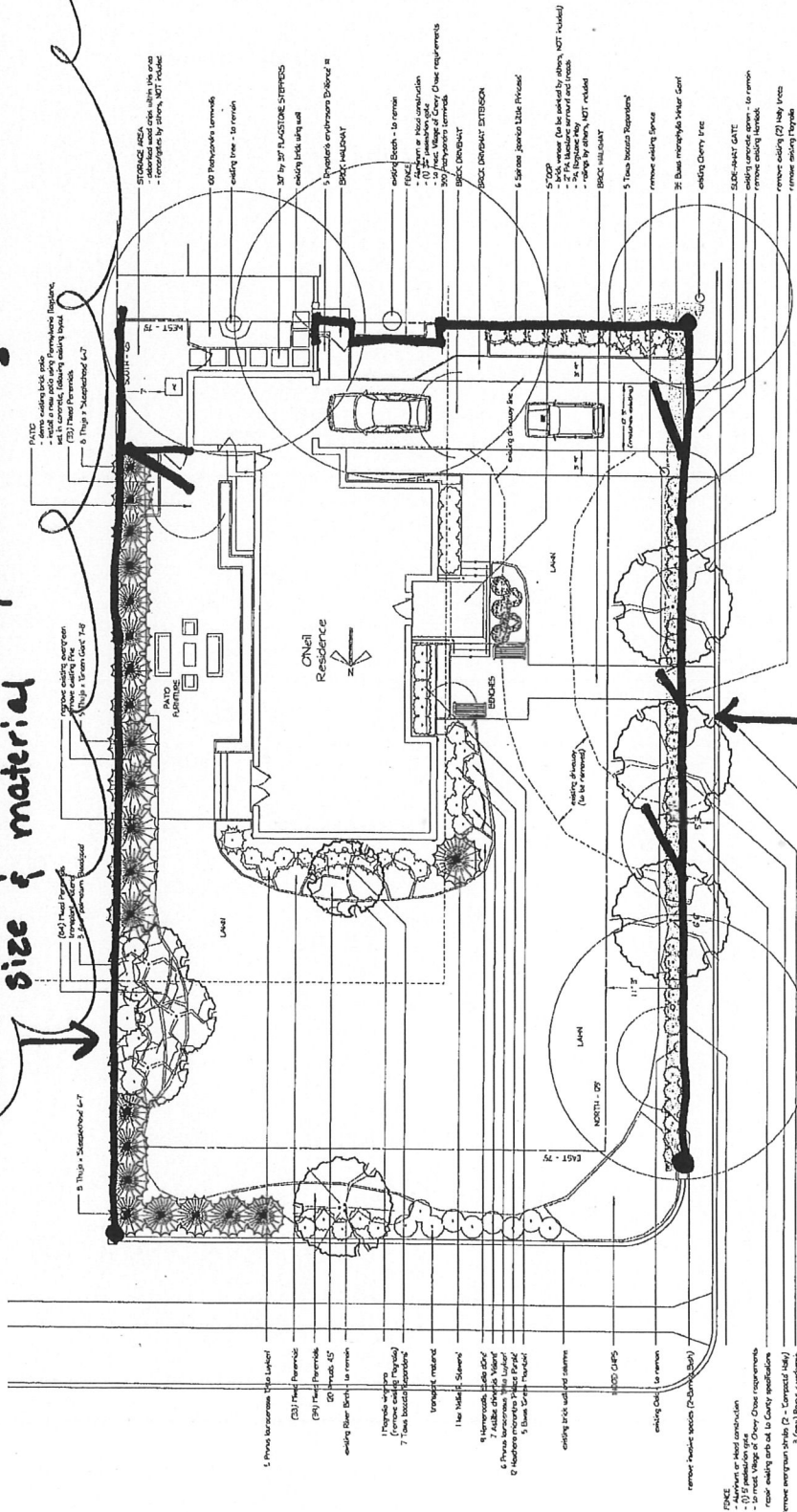


LANDSCAPE PLAN

ONEIL Residence
5903 Kinkadee Drive
Cherry Chase, MD 20815

| | |
|-------------|-----------|
| DATE | 1-18 |
| DESIGNED BY | FEEL Rely |
| DATE | 5-20-0 |
| DATE | 5-20-0 |

separate appeal & permits
6' wooden stockade to replace existing fence of same size & material



MONTGOMERY COUNTY
DEPARTMENT OF PERMITTING SERVICES
APPROVED DATE 4/15/2011
ZONING CLASS R-1 PAGE 20
BOARD OF APPEALS CASE 3.5'-6' FENCE

42" iron fence - new
ROW to fence

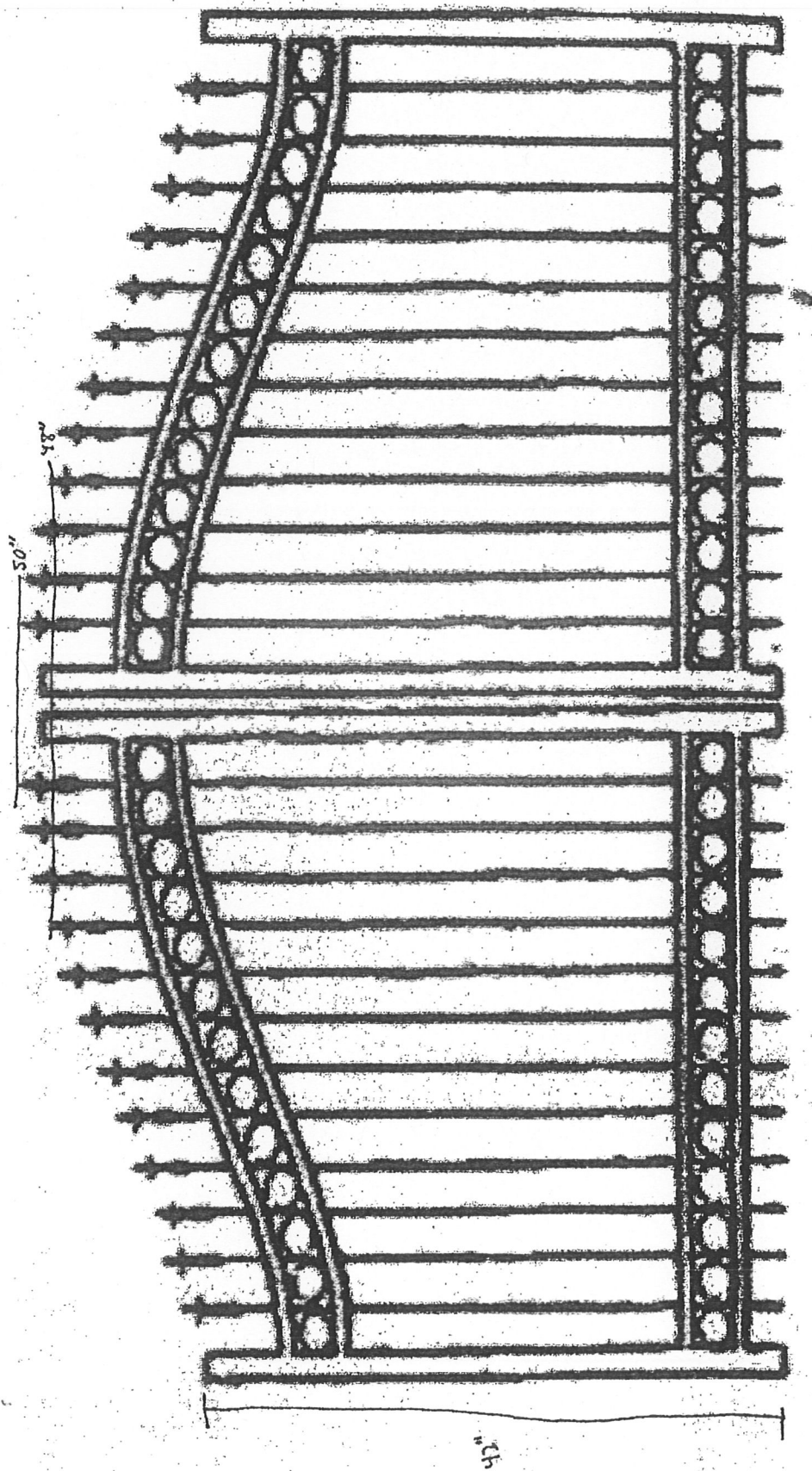
previously approved



previously approved



previously
approved



proposed





(301) 350-2400

MHIC # 9615

LONG FENCE

Long Fence Company, Inc.

8545 Edgeworth Drive • Capitol Heights, Maryland 20743-3741

1-800-486-GATE (Outside Metro Area) • Fax (301) 336-0743

www.longfence.com

Job No. _____

Order No. _____

Customer No. _____

Date 9/2/11



BUYER'S NAME

STREET:

CITY:

ST:

ZIP

COUNTY:

MAP Page/Grid

HM PH:

CELL: 201-654-1970

WK PH:

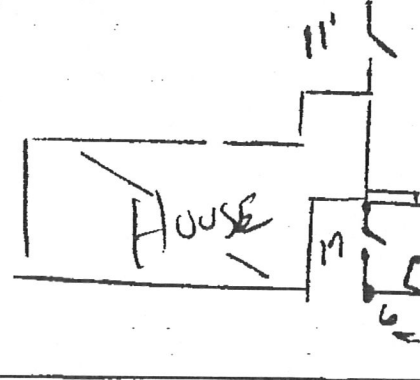
MR.

MS.

E-MAIL:

LEAD #:

Long Fence Company, Inc. (herein called Seller) proposes to furnish materials, labor and equipment to install:



TO INSTALL

164' OF 42"

IRON GALV DP

Single TH

2- 42x42 GALV GATE

BLACK - 1 1/2" BAND

2" POST

4" GATEPOST BY OWNER

CONR
SECTION

Estimated Monthly Investment*

Per Month

Months

Program:

*With Approved Credit

PLEASE PAY OUR FOREMAN

Additional Information or Remarks:

ALSO 150' OF 6" V. BOARD

FACIA BOARD

CROWN - 1x4

WOOD CAPS

6x4 GATE

Total Contract Price

Deposit With Order

Due on Day Materials are Delivered

Due on Day of Substantial Completion

And/or Balance Financed

Work to begin approximately

Work to be completed approximately

This projection is contingent upon obtaining approved financing, permits, H.O.A., and other conditions beyond Seller's control.

Estimate valid for 30 days for purpose of acceptance by the buyer.

Buyer agrees to pay for the goods, services and installation referred to above in accordance with the terms of this Agreement.

Buyer acknowledges that before Buyer signed this Agreement, Seller submitted the Agreement to Buyer with all blank spaces filled in and that buyer had a reasonable opportunity to examine it and that thereafter a legible executed and completed copy thereof was delivered to Buyer. Buyer has read and understands both the front and reverse sides of this Agreement, and agrees to the terms and conditions as set forth herein.

Long Fence Company, Inc.

Chris Bucca

(Sales Representative's Signature)

301 908-4129

Laura P.

(Signature)

Buyer(s)

9-2-11

Date

Sales Representative's Printed Name

License No.

(Signature)

Date

BUYER'S RIGHT TO CANCEL: You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the accompanying notice of cancellation for an explanation of this right. If you cancel within the time period noted above, the seller may not keep any of your cash down payment.